

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

NNENNA ELLA PETERS  
9121 River Road  
Potomac, MD 20854

Plaintiff,

V.

BEST BUY STORES, L.P.  
T/A MAGNOLIA HOME THEATER  
526 King Street, Ste. 423  
Alexandria, VA 22314

Serve: Resident Agent  
The Corporation Trust, Incorporated  
2405 York Road, Ste. 201  
Lutherville Timonium, MD 21093

AND

MAGNOLIA HI-FI, LLC  
7601 Penn Ave. South  
Richfield, MN 55423

Serve: Resident Agent  
The Corporation Trust, Incorporated  
2405 York Road, Ste. 201  
Lutherville Timonium, MD 21093

Defendant(s).

**COMPLAINT**

COMES NOW the Plaintiff Nnenna Ella Peters (hereinafter "Peters"), by and through counsel Shawn C. Whittaker, Scott M. Myers, and Whittaker|Myers, PC, and submits this Complaint against Defendants Best Buy Stores, L.P. t/a Magnolia Home Theater (hereinafter "Best Buy") and Magnolia Hi-Fi, LLC (hereinafter "Magnolia Hi-Fi," hereinafter collectively "Magnolia"), and in support thereof states the following:

**COMPLAINT - 1**

WHITTAKER|MYERS, PC  
1010 Rockville Pike – Suite 607  
Rockville, MD 20852  
Tel: 301.838.4502 / Fax: 301.838.4503  
[www.whittakermyers.com](http://www.whittakermyers.com)

**PARTIES AND JURISDICTION**

1. Peters is a Maryland resident and resides at 9121 River Road, Potomac, MD 20854.
2. Best Buy is a Virginia limited partnership with a principal place of business at 526 King Street, Ste. 423, Alexandria, VA 22314. Best Buy sells and installs home theater systems, home security systems, and appliances.
3. Magnolia Hi-Fi is a Washington limited liability company with a principal place of business at 7601 Penn Avenue South, Richfield, MN 55423. Magnolia Hi-Fi sells and installs home theater systems, home security systems, and appliances.
4. The acts or omissions giving rise to Peters' claims occurred in Montgomery County, Maryland.
5. Jurisdiction is proper in this Court pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102.
6. Venue is proper in this Court pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201.

**FACTS**

7. Peters incorporates the preceding allegations as if fully stated herein and further states the following:
  8. On or about August 12, 2015, Peters and Magnolia entered into an agreement for Magnolia to supply and install a home theater system, a home security system, and related appliances and devices at Peters' Property at 9121 River Road, Potomac, MD 20854 (hereinafter "Property"). *See Agreement attached as Ex. 1.*

9. As late as June, 2017, Peters and Magnolia agreed to additional work to be performed at the Property in connection with the home theater system and home security system. *See Agreement attached as Ex. 2.*

COMPLAINT - 2

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10. The home theater system and home security system Magnolia installed did not function properly.

11. Peters notified Magnolia on multiple occasions of the problems with the home theater system and home security system.

12. Magnolia sent technicians to Peters' Property in an attempt to complete the work on the home theater system and home security system.

13. Magnolia promised on multiple occasions to correct the deficiencies in the home theater system and home security system.

14. As late as March, 2020, Magnolia visited Peters' Property in an attempt to correct the deficiencies in the home theater system and home security system.

15. Despite Peters' making payment to Magnolia, Magnolia has not provided a functioning home theater system and home security system.

16. Peters' has been damaged by Magnolia's actions due to paying Magnolia for a non-functioning home theater system and home security system.

17. Peters will need to pay additional amounts to repair the home theater system and home security system.

18. In connection with Magnolia's installation of a home theater system and home security system at the Property, Peters purchase an ice maker from Magnolia to be installed at the Property.

19. The ice maker did not function properly.

20. Magnolia sent multiple technicians to inspect the ice maker.

21. On or about May 6, 2017, during an inspection of the ice maker by a Magnolia technician, the technician left a water valve on which caused the ice maker to flood the Property.

COMPLAINT - 3

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22. On or about May 6, 2017, Peters discovered the flooding caused by Magnolia's actions.

23. The flooding caused by Magnolia significantly damaged the Property, including the carpet and carpet pad.

24. The estimated cost to repair the damages caused by Magnolia is an amount in excess of \$75,000.00, including at least \$48,969.76 to repair the damages caused by the ice maker.

25. On or about December 27, 2017, Peters, through counsel, demanded that Magnolia repair the damages. *See Letter attached as Ex. 3.*

26. Despite demand, Magnolia did not repair the damages caused by the flooding.

**COUNT I**  
**BREACH OF CONTRACT**

27. Peters incorporates the preceding allegations as if fully set forth herein and further states the following:

28. Peters and Magnolia entered into an agreement for Magnolia to deliver and install a home theater system and home security system at Peters' Property.

29. Magnolia did not provide a functioning home theater system and home security system to Peters.

30. Additionally, on or about May 6, 2017, in connection with the installation of the home theater system and home security system, Magnolia caused the ice maker to flood Peters' Property.

31. As such, Magnolia breached the parties' Contract.

32. Magnolia's breaches of Contract have resulted in damage to Peters' Property.

33. The damages to Peters' Property, specifically the flooding caused by the ice maker, were a foreseeable consequence of Magnolia's breach of contract.

COMPLAINT - 4

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34. Peters has been damaged by Magnolia's breaches of contract in an amount in excess of \$75,000.00.

WHEREFORE, Plaintiff Nnenna Ella Peters respectfully requests judgment against the Defendants Best Buy Stores, L.P. t/a Magnolia Home Theater and Magnolia Hi-Fi, LLC, jointly and severally, in the following amounts:

- a) Compensatory damages in an amount exceeding \$75,000.00;
- b) Post-judgment interest at the legal rate;
- c) Costs of this action; and
- d) Any other remedy this Court deems just and proper.

**COUNT II**  
**NEGLIGENCE**

35. Peters incorporates the preceding allegations at Paragraph 1 through 6 as if fully set forth herein and further states the following:

36. Magnolia owed a duty to Peters to inspect and perform repairs on the ice maker in a professional and workmanlike manner and in compliance with the standards of the trade.

37. Magnolia had a duty to conduct repairs on the ice maker pursuant to industry standards.

38. The ice maker inspected by Magnolia was improperly repaired and left in a condition which caused flooding and damage to Peters' Property.

39. Magnolia breached its duties owed to Peters.

40. Peters incurred damages of at least \$48,969.76 due to Magnolia's negligence.

WHEREFORE, Plaintiff Nnenna Ella Peters request judgment against Defendants Best Buy Stores, L.P. t/a Magnolia Home Theater and Magnolia Hi-Fi, LLC, jointly and severally, in the following amounts:

COMPLAINT - 5

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Rockville, MD 20852

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- a) Compensatory damages in an amount exceeding \$48,969.76;
- b) Post-judgment interest at the legal rate;
- c) Costs of this action; and
- a) Any other remedy this Court deems just and proper

**COUNT III**  
**VIOLATIONS OF CONSUMER PROTECTION ACT, MD. CODE ANN.**  
**COMM. LAW. § 13-301, ET SEQ.**

41. Peters incorporates the preceding allegations at Paragraphs 1-40 as if fully set forth herein and further states the following:

42. Magnolia made representations that the work for the home theater system and home security system would be of a particular standard, quality, grade, and style.

43. Magnolia failed to perform the work for the home theater system and home security system in a workmanlike manner and in accordance with industry standards.

44. Magnolia's actions have violated the Consumer Protection Act.

45. As a result of Magnolia's violations of the Consumer Protection Act, Peters has been damaged in an amount in excess of \$75,000.00.

WHEREFORE, Plaintiff Nnenna Ella Peters request judgment against Defendants Best Buy Stores, L.P. t/a Magnolia Home Theater and Magnolia Hi-Fi, LLC, jointly and severally, for the following:

- a) Compensatory damages in an amount exceeding \$75,000.00;
- b) Reasonable attorneys' fees;
- c) Post-judgment interest at the legal rate;
- d) Costs of this action; and
- e) Any other remedy this Court deems just and proper.

Respectfully submitted,

Shawn C. Whittaker, Esq., CPF No. 9912160272  
Scott M. Myers, Esq., CPF No. 1606210192  
Whittaker|Myers, PC  
1010 Rockville Pike, Suite 607  
Rockville, MD 20852  
Phone: (301)838-4502  
Fax: (301)838-4505  
shawn@whittakermyers.com  
scott@whittakermyers.com

**MD. R. 20-201(f) CERTIFICATE REGARDING RESTRICTED INFORMATION**

I HEREBY certify that the foregoing Complaint does not contain any restricted information.

Shawn C. Whittaker

**Peters Completion**  
**08/12/2015**

**Customer Information:**

Ella Peters

(301) 318-2977

**Installation Address:**

9121 River Rd

Potomac, MD 20854

**System Designer:**

Peter Pellegrino

Store: (301) 770-8061

Cell: (410) 561-2260

PPellegrino@magnoliaav.com

**EXHIBIT**

**MAGNO**

# Client Goals

## Ella Peters Final Installation Scope of Work

Hello Ella,

Below you will see the complete list of products and services required to complete our original scope of work. Please review the information and let us know if any part of this scope of work differs from your thoughts.

Also, you will see a complete programming scope of work detailing how each room will function.

### Upstairs Theater

Magnolia AV will deliver and install an HDMI switch for up to (4) game systems. The switch will be connected to the AV receiver via an Atlona HDMI Balun.

The (4) gaming systems and the HDMI switch will be housed in the Salamander stand mounted to the wall.

The Control4 system installed by Magnolia AV will provide control of the AV receiver, used to toggle to the HDMI switch to operate any of the (4) game systems. The video will be displayed on the TV and the sound will be played through the surround sound speakers.

Magnolia will install a starry night ceiling in the theater, which will be centered in the room between the outer recessed lights. The accompanying remote will be able to control the twinkle and brightness of the starry night ceiling.

### Basement Theater

Magnolia AV will deliver and install an HDMI switch for the (4) game systems. The switch will be connected to the AV receiver via an Atlona HDMI Balun.

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**MAGNOLIA** 

Designed by Peter Pellegrino | Business: (301) 770-8061 | Cell: (410) 561-2260 | Email: [PPellegrino@magnoliaav.com](mailto:PPellegrino@magnoliaav.com)

The (4) gaming systems and the HDMI switch will be housed in the Salamander stand mounted to the wall. The Control4 system installed by Magnolia AV will provide control of the AV receiver, used to toggle to the HDMI switch to operate any of the (4) game systems. The video will be displayed on the TV and the sound will be played through the surround sound speakers.

### **Outdoor Patio**

Magnolia will deliver and install a pair of Sonance speakers for the outdoor patio area, which will be mounted in the ceiling of the covered patio. These speakers can be operated via the Control4 system by selecting that audio source.

### **TV Installations**

Magnolia AV will mount and connect Samsung TVs in the following areas: 1. his office, 2. upstairs gym, and 3. basement kitchen.

The TVs for his office and the upstairs gym are Samsung TVs and are currently onsite. The TV for the basement kitchen still needs to be purchased. (*Client would like an inexpensive television for the basement kitchen area.*)

The TVs in the office and the upstairs gym will be connected to the HDMI Matrix switch. The basement kitchen TV will have only a standard definition cable box connected to the TV. The cable box will be mounted directly behind the TV. These two locations will also be controlled via Control4 for ease of use.

### **Main Equipment Area**

Magnolia will install HDMI splitters at cable boxes with direct connections to the television. We will complete equipment installation; some equipment needs to be moved and wire management needs to be performed with the moving of equipment.

### **Basement Bar**

Magnolia AV will swap the current 96" tall Seura mirror televisions with mirror televisions which will fit the space provided: from the bar to the ceiling, with a maximum of a 1.5" gap (allowing the televisions to be mounted to the space). These televisions will be vanishing mirrors, which will be controlled by Control4.



*Note: Magnolia still needs final sign off on the mirror swap out.*

### **Control 4 Touch Panel Intercom/Door Station**

Magnolia AV will provide and program (1) door station (with associated back box), (3) portable touch screens, and (7) in-wall touch screens (with associated back boxes) to operate the Control4 system. These touch panels will provide intercom capability between the proprietary Control4 devices (touch panels and door stations), as well as allow full control of any room programmed into Control4. This will include audio, video, lighting, etc.

The touch panels and door station will all act as points for intercom use, for both audio and video.

The following rooms will have in-wall touch panels: 1) dining room, 2) living room, 3) kitchen, 4) kid's room 1, 5) kid's room 2, 6) guest room 1, and 7) guest room 2.

*Note: The in-wall touch panels must be installed over a power outlet by a certified electrician. The back box for the outdoor door station will be installed by client's contractor. These will communicate to the rest of the home control system through the customer's wireless (Wi-Fi) network.*

The following rooms will have portable touch panels: 1) master bedroom, 2) upstairs theater, and 3) basement.

*Note: These products are special order, and have a lead time before shipping. Magnolia would like to bring a set of these touch panels to the home to ensure Ella is happy with the functionality of these touch panels.*

### **Networking Upgrade**

In the main equipment closet, the installation team will install a Luxul commercial-grade router. This router will allow the entire Control 4 system to operate more efficiently, including the intercom and touch panels.

The network solution will consist of the main router (ABR4400) as well as (3) wireless access points (XAP1500), which will improve the home's existing wireless network. A wireless access point will be located in the basement bar area for maximum coverage in the lower level area. The second wireless access point will be located on the top floor in the master closet area. This location will maximize the Wi-Fi coverage in the master suite area.



The third wireless access point will be located in a closet outside of bedroom 4. This will maximize the coverage for the top floor bedroom areas and the office area on the main level.

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## Ella Peters Programming Scope of Work

### Control4 Integration

#### **Lutron**

Magnolia AV will integrate the Lutron drapery system and the lighting control system into the Control4 system.

*Note: The lighting system is already installed and programmed by another company. Magnolia is not responsible for programming lighting or providing engravings for the switches. Magnolia will need to be provided the **Integration Report** from the company that installed and programmed the Lutron HomeWorks system in order to accomplish the integration into the Control4 system.*

#### **Thermostats**

Magnolia will deliver and program Control4 thermostats into the Control4 System.

*Note: A Certified HVAC Technician will need to install the Control4 Thermostats*

**Audio Video Programming** - Each room below is controlled through the Control4 system.

**The Master Bedroom** will have the following activities programmed into Control4 to watch and listen to the following sources:

**A. Watch**

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

**B. Listen**

1. Verizon
2. Kaleidescape
3. Sonos\*

**The Master Sitting** will have the following activities programmed into Control4 to watch and listen to the following sources:

A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

**The Upstairs Theater** will have the following activities programmed into Control4 to watch and listen to the following sources:

A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

**The Basement Theater** will have the following activities programmed into Control4 to watch and listen to the following sources:

A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

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B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

**The Master Bedroom** will have the following activities programmed into Control4 to watch and listen to the following sources:

A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

**Her Office** will have the following activities programmed into Control4 to watch and listen to the following sources:

A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

**Family Room** will have the following activities programmed into Control4 to watch and listen to the following sources:

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A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

**Breakfast Nook** will have the following activities programmed into Control4 to watch and listen to the following sources:

A. Watch

1. Verizon Cable Box x 3
2. Kaleidescape video Server x 2
3. Oppo Blu-Ray Player

B. Listen

1. Verizon
2. Kaleidescape
3. Sonos\*

***\*Sonos Note - There are currently no Sonos players in the system, but we will trade two of your Sonos connect amplifiers from your previous residence and give you two Sonos Connect players to have Pandora and TuneIn Radio added to the audio distribution system.***

**Surveillance Camera System** - An Ip Surveillance system has been installed in the following locations listed below.

The video from each camera will be viewable from the Control4 app and/or from the QNAP app. The video recording will be stored on a QNAP Network Video Recorder that is located in the basement equipment closet.

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1. Basement Kitchen
2. Basement Theater
3. Basement Pool Table
4. Basement Bar
5. Kitchen
6. Indoor Pool
7. Hallway
8. Girls Bedroom
9. Boys Bedroom
10. Master Closet
11. Garage
12. Drive
13. Parking area
14. Right side of the home
15. Outdoor pool area
16. Tennis Court area
17. Master Balcony
18. Front Entrance area

## Phase I

- Mount televisions and connect to video and audio distribution system and program into Control4
- Install HDMI splitters to resolve HDMI sync issue
- Install hdmi switch and connect game systems upstairs theater. Hide all components in the cabinet below. Program Control4
- Install hdmi switch and connect game systems basement theater. Hide all components in the cabinet below. Program Control4
- Integrate Surveillance camera's into Control4
- Complete setup of QNAP NVR and Teach Client how to use
- Install Starry Night Ceiling

## Phase II

- Install Control4 door station at front door
- Program the door station into control4
- Install the Control4 touchpanels
- Program into control4 system
- Test intercom feature at each location
- Teach Client how to use the room to room and front door station
- Integrate Drapery into Control4 system
- Integrate Lutron Lighting into Control4
- Install and configure new Luxul WiFi equipment

## Phase III

- Seura TV install
- Program Seura into Control4 and test

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## Installation Details

Installation Timeframe requests: 08/12/2015

Is Ferry travel required?: No

What's Behind the Drywall?: studs

Service Type:

- Installation

Installation Notes:

Magnolia Design will perform the work to complete the current phase of the Peter's location.

Basement Theater Magnolia will Deliver and Install 1 ATHD4v41. This will allow the Peter's have the gaming systems work in said location. Magnolia Installers will use current HDMI cables that are already on site to hook part into the system. Magnolia will install a starlight ceiling by Acoustic Geometry. This will take approx 2 days. Upstairs Theater Magnolia will Deliver and Install 1 ATHD4v41. This will allow the Peter's have the gaming systems work in said location. Magnolia Installers will use current HDMI cables that are already on site to hook part into the system. Video Distribution Magnolia Design will install Vanco part on

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**MAGNOLIA** 

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each TV location in order to resolve the sink issues. Outdoor Patio Magnolia will deliver and install Sonance outdoor speakers in the ceiling of the outdoor patio area. Magnolia will also install the 3 remaining TV on the wall in there said location. We will use Sanus mounts. Magnolia will set up the Lutron Drapery Trac to open and close at the proper set up location.



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# Customer Experience Systems & Sub-systems

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# Pricing

<b>Grand Total</b>	<b>\$0.00</b>
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All Proposal Grand Totals Are +/- 10% Without Tax Included

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# Sales and Installation Agreement

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The terms set forth herein, together with the TERMS AND CONDITIONS attached hereto and the terms of the Proposal to which this page is attached, each of which is incorporated herein by reference, constitutes the agreement of Magnolia Hi-Fi, LLC ("Magnolia") to sell to the customer identified below ("Customer") and Customer to purchase from Magnolia, the products and/or other materials necessary to complete the project described in the Proposal ("Equipment") and the installation, design, and/or other services to complete the project described in the Proposal ("Services") in connection with the location set forth below ("Location") (the "Agreement").

**The Location of the project where the Equipment is to be installed and the Services performed is:**  
9121 River Rd, Potomac, MD 20854

Customer accepts the scope of work and terms of payment for the project described in the Magnolia Design Center Proposal dated ..... ("Proposal") in the total amount of ..... ("Proposal Amount"). Customer agrees to pay the Proposal Amount, as may be adjusted as set forth in the Agreement, to Magnolia in exchange for the Equipment and Services provided by Magnolia to complete the project according to the terms of the Agreement.

The Proposal Amount is based upon the information known to Magnolia on the date of the Proposal, including the then current cost of the Equipment, information provided by the Customer to Magnolia and the terms of the Proposal. Additional charges may apply due to changes in the cost of Equipment as permitted herein, changes to the scope of the Services and/or Equipment that are initiated by the Customer, and/or information about the Location subsequently discovered by Magnolia.

**Please initial to show you agree with the following:**

..... Special orders require a 15% non-refundable deposit per Section 1.2 of the Terms and Conditions.  
..... Custom orders require full non-refundable payment prior to Magnolia ordering per Section 1.3 of the Terms and Conditions.  
..... Customer, at its expense and prior to delivery and installation of the Equipment at the Location, shall prepare the Location in an appropriate manner and shall cause the Location to conform to any utility, climate control, and communication interface specifications that Magnolia or the manufacturers of the Equipment may supply. Customer acknowledges that Magnolia does not install, repair or modify electrical wiring for power, heating or lighting purposes. Magnolia does not provide, fabricate, or install custom built cabinets.  
..... Upon project completion a Magnolia representative will review installation and functionality of all equipment with the customer per the approved Proposal. Any incomplete or unsatisfactorily completed items from the approved Proposal will be noted, and Magnolia agrees to remedy any agreed upon items in a reasonable amount of time. Customer agrees to sign a Project Completion Acknowledgement form upon satisfactory completion of the project per the approved Proposal.

**PAYMENT TERMS:** Unless otherwise agreed to by the parties in writing, for each phase of performance of the project, all costs (including applicable taxes) related to such phase including, but not limited to, costs for Equipment, other parts, and Services shall be paid in full by Customer prior to commencement of Services by Magnolia for such phase. Special and Custom Orders are subject to special payment terms as set forth in the TERMS AND CONDITIONS. Magnolia may cancel delivery of Equipment and/or cease performing Services in the event a required payment is not timely made as required.

**ALL PAYMENTS MADE BY CUSTOMER TO MAGNOLIA ARE NON-REFUNDABLE** except where allowed in accordance with Magnolia's return policy in connection with the return of certain Equipment.

Magnolia and Customer have signed this Agreement effective the last date indicated below when accepted by Magnolia.

**Magnolia Representative**

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: 9121 River Rd Potomac, MD 20854

Date: \_\_\_\_\_

**MAGNOLIA** | 

# Terms & Conditions

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"Magnolia" as used herein refers to Magnolia Hi-Fi, LLC. "Customer" as used herein refers to the customer referenced on the Agreement to which these terms and conditions are attached (the "Agreement"). Terms not defined in these Terms and Conditions shall have the meaning as set forth in the Agreement.

## Section 1 Price, Charges, and Taxes

- 1.1. **Pre-Payment.** Unless otherwise set forth in the Agreement, all costs and estimated costs for Equipment and Services (as each is defined in the Agreement) must be pre-paid prior to commencement of performance of Services or delivery of any Equipment for each phase of the Services as described in the Agreement. Where Customer pays with a credit card, Customer agrees not to file a claim with the credit card company to obtain a refund of any funds paid to Magnolia ("chargeback"), and Customer further agrees to pay to Magnolia any funds subject to a chargeback processed in contravention of this provision unless Customer can prove with clear and convincing evidence that it did not receive the Equipment or Services for which it paid.
- 1.2. **Special Orders.** All orders for Equipment not generally carried by Magnolia and/or which require that an order be placed directly with the manufacturer or distributor of such Equipment ("Special Order") shall be subject to a non-refundable deposit of fifteen percent (15%) of the price of the Equipment. The non-refundable deposit will not be returned to Customer under any circumstance, including a return of the Equipment, other than the Equipment (as ordered) becomes unavailable.
- 1.3. **Custom Orders.** All orders for Equipment where Customer has requested specific attributes (e.g., finish, color, size) or where manufacturer builds only to order ("Custom Order") shall require complete and full payment of the price of such Equipment at the time the Custom Order is placed. The purchase price for Custom Order Equipment is non-refundable. The non-refundable purchase price shall not be returned to Customer under any circumstance other than a complete failure to deliver Equipment. Any Customer complaint concerning the condition of Custom Order Equipment or whether it meets specifications shall be handled as a warranty claim under the manufacturer's warranty.
- 1.4. **Permits.** Customer is responsible for the cost of and obtaining any required building permits. Where a permit is specifically required for work being performed by Magnolia, Magnolia shall cooperate with Customer to procure such permit. Customer shall hold Magnolia harmless for any costs and expenses that arise from Customer's failure to cooperate in the procurement of an applicable permit.
- 1.5. **Costs.** If Magnolia employs any legal process to recover any amount due and payable from Customer hereunder, Customer shall pay all costs of collection and reasonable attorney fees.
- 1.6. **Freight and Insurance.** Customer shall reimburse Magnolia for all charges for transportation, rigging, and drayage and for insurance, if any, of the Equipment in transit. If Magnolia uses a third-party mover or carrier to ship the Equipment to the Location, Magnolia shall, unless it notifies Customer to the contrary, arrange for shipment or carriage of the Equipment, collectively or by component, to Customer F.O.B. point of manufacture or shipment.
- 1.7. **Taxes.** Customer shall be responsible for applicable taxes on Equipment and Services.

## Section 2 Delivery, Inspection, and Services

- 2.1. **Site Preparation.** Customer, at its expense and prior to delivery and installation of the Equipment at the Location, shall prepare the Location in an appropriate manner and shall cause the Location to conform to any utility, climate control, and communication interface specifications that Magnolia or the manufacturers of the Equipment may supply. Magnolia shall not be required to perform the Services unless the Location is free of dust, debris and/or other impediments as Magnolia may reasonably determine, and Magnolia has reasonable cooperation and access to the Location, the designated work area, utilities and functional utility shutoff controls. Magnolia reserves the right to refuse or reschedule work due to unsafe site conditions which includes, without limitation, extreme temperatures, unsanitary conditions, circumstances that pose potential code violations, natural disasters, or the existence of other hazards.
- 2.2. **Delivery and Inspection of Equipment.** Customer is responsible for accepting delivery of Equipment at the Location. In the event Customer authorizes a third party to accept delivery or Magnolia to deliver in the absence of Customer, Customer hereby waives any right to claim non-delivery of goods, in whole or in part, where Magnolia can reasonably establish a delivery of the Equipment based on its records. Customer shall promptly inspect the Equipment upon its arrival at the Location and shall notify Magnolia if Customer finds any nonconformity or defect in the Equipment.
- 2.3. **Service Dependencies.** Customer acknowledges and agrees that where Services to be provided and/or completed by Magnolia are dependent on others performing work (e.g., providing power, building enclosures or cabinetry) Magnolia will not be liable for any delays in completing its Services due to incomplete work of others. Upon discovery of any unknown or undisclosed information concerning the condition of the project site or the status of dependencies, the project scope and/or schedule is subject to alteration.
- 2.4. **Service Exclusions.** Magnolia does not install, repair or modify electrical wiring for power, heating or lighting purposes. Magnolia does not provide, fabricate, or install custom built cabinets. Magnolia may, however, provide dimensions and specifications for cabinetry as agreed upon by Customer and Magnolia. Magnolia does not provide fabrication or installation of customer speaker grills and/or coverings. Magnolia does not provide painting of speaker grills, wall plates or other accessories. Certain non-standard wall plates will require additional charges. Magnolia does not provide outdoor in-ground wiring services and will not modify grass or landscape services or provide labor or tools for trenching buried cable. Magnolia will install and configure control systems and controllers sold by Magnolia and will integrate audio/video functions, but Magnolia does not integrate lighting or other powered devices with such control systems (once integrated, such powered devices can be configured to operate with the control system by Magnolia).
- 2.5. **Adult Must Be Present.** If persons under the age of 18 are present at the Location without adult supervision, Magnolia personnel will not perform Services.
- 2.6. **Right to Modify Location.** Customer represents and warrants ownership of the Location or that Customer has obtained the valid consent of the owner to make necessary changes to the Location that may arise out of the performance of the Services. In addition, Customer has reviewed any restrictive covenants or association restrictions to confirm that any changes arising from the Services do not violate any such covenants or restrictions. Customer agrees to hold Magnolia and its employees, contractors and agents harmless from any claim that Customer or Magnolia failed to obtain valid consent of the owner of the Location or violated any covenant or restriction.
- 2.7. **Change Orders.** If changes are required in the Equipment or the Services the prices will be revised in writing signed and agreed by both parties ("Change Order"), and prices will thereafter be modified to the extent necessary by the Change Order.



- 2.8. **Architects or Builders.** In appropriate situations the Customer may designate in a writing delivered to Magnolia a representative such as a builder, architect or interior designer who shall have authority as indicated in the writing to sign for and commit the Customer to price and other modifications to Equipment, design, locations or diagrams, and any such designated agent shall be deemed "Customer" for purposes of the Agreement.
- 2.9. **Lathe and Plaster.** Notwithstanding anything in these Terms and Conditions to the contrary, Magnolia will use commercially reasonable efforts to eliminate the possibility of cracks in lathe and plaster walls while performing the Services. However, Customer acknowledges and agrees that due to the nature of construction of such materials, Magnolia shall not be responsible or liable for any resulting damage to such lathe and plaster walls.

### Section 3      **Warranties and Limitations**

#### 3.1. **Limited Warranty and Disclaimer.**

- 3.1.1. **Limited Equipment Warranty.** Magnolia's sole obligation, and Customer's exclusive remedy, for any defect or nonconformity in the Equipment shall be for Magnolia to cooperate with Customer to provide it with the benefit, if any, of the warranty and support commitment of the third-party manufacturers and suppliers of the Equipment. Customer, recognizing that Magnolia is not the manufacturer of the Equipment, expressly waives any claim against Magnolia for any failure of the Equipment. Customer may independently seek to obtain directly from the manufacturers of the Equipment maintenance or repair of the Equipment under any warranty or guarantee provided by such manufacturer. Customer acknowledges, unless Customer obtains separate service agreements with such manufacturers and suppliers or other third party covering maintenance or repair of the Equipment at the Location, that such manufacturers and suppliers may require Customer to deliver defective Equipment to their authorized service centers for maintenance or repair.
- 3.1.2. **Limited Services Warranty.** As Customer's exclusive remedy for any nonconformity or defect in the Services for which Magnolia is responsible, Magnolia shall, during the ninety (90) day period following the completion of delivery and installation of the Equipment at the Location, provide reasonable efforts to correct or cure such nonconformity or defect.
- 3.1.3. **Conditions Precedent.** Magnolia shall bear no responsibility for correcting, curing, or otherwise remedying any nonconformity or defect in the Services if (1) the Equipment is not properly installed by a party other than Magnolia; (2) the Equipment is not maintained and operated under normal conditions by qualified personnel (where required); (3) the Equipment incorporates spare or replacement parts other than those purchased under this Agreement; (4) the Equipment has been altered, abused, misused, or taken apart; (5) the nonconformity or defect (or other breach with respect to the condition or operation of the Equipment) has not been reported to Magnolia within ninety (90) days following the completion of delivery and installation of the Equipment at the Location; or (6) the nonconformity or defect has arisen as a result of damage to the Equipment occurring subsequent to delivery thereof to the Location, unless, in any such case, such event or condition directly results from the fault or negligence of Magnolia.
- 3.1.4. **Disclaimer.** With the sole exception of the preceding undertakings, MAGNOLIA DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT (INCLUDING ANY PROGRAMS), INCLUDING ITS CONDITION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR

**MAGNOLIA** | 

Designed by Peter Pellegrino | Business: (301) 770-8061 | Cell: (410) 561-2260 | Email: [PPellegrino@magnoliaav.com](mailto:PPellegrino@magnoliaav.com)

PURPOSE OR USE. MAGNOLIA FURTHER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY MAGNOLIA HEREUNDER.

- 3.2. **Limitation of Liability; Indemnification.** Customer agrees that except for direct property damage or personal injury resulting from Magnolia's negligence while performing Services in no event shall Magnolia be liable to Customer or any other person for any damages including, without limitation, any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Customer by any other party, even if Magnolia has been advised of the possibility of such claims or demands, arising out of or related to the Services, or installation, de-installation, use of or inability to use the Equipment. Further, Customer affirmatively releases, and agrees to indemnify, defend and hold harmless Magnolia (including its employees, officers, directors and agents) from and against (i) any loss, liability, or damage that Customer may suffer as a result of acts or omissions by Magnolia at the request or approval of Customer, including but not limited to, any changes or alterations to the Location (e.g., changes to walls, baseboards, or floors), (ii) any claim against, or loss, liability, or damage suffered by Magnolia arising out of a breach of Customer's obligations (including representations and warranties) set forth in the Agreement, and (iii) any claim against, or loss, liability or damage suffered by Magnolia arising out of Customer's negligence or willful misconduct. Some states do not allow limitations or release of certain damages or liability, so the above limitation of liability and release may not apply to Customer.
- 3.3. **Allocation of Risk.** The foregoing sections on limited warranty, warranty exclusions and limited liability reflect a bargained-for allocation of risk between Customer and Magnolia. Customer acknowledges and agrees that Magnolia's prices and/or rates set forth in the Agreement would be different if the foregoing allocation of risk were different.
- 3.4. **Force Majeure.** Magnolia shall not be responsible for delays or failures in its performance resulting from acts or omissions beyond its control.

#### Section 4 Limited License

Subject to the terms and conditions in this Agreement, Magnolia grants Customer a non-transferable, non-assignable, non-exclusive, royalty-free limited license, without the right to sub-license, to use the (i) paper or electronic copies of documentation produced and delivered to the Customer under the Agreement, including but not limited to the Proposal, drawings, specifications and/or any other instruments of service provided by Magnolia (the "Documentation"), and (ii) any source code developed by Magnolia for Customer in connection with the Services (the "Source Code"). Notwithstanding the foregoing, in no event shall Customer (i) sell, transfer, distribute, reverse engineer or create any derivative works using the Documentation or the Source Code or (ii) use the Documentation or the Source Code for any illegal purpose.

#### Section 5 Default

- 5.1. **Events of Default.** Any of the following shall constitute an "Event of Default" under the Agreement:
  - 5.1.1. Customer's failure to pay to Magnolia any charge, cost, or other payment accruing hereunder, if such delinquency has not been corrected within ten (10) days after Magnolia has given Customer written notice of such delinquency.
  - 5.1.2. Customer's failure to perform any other obligation set forth in this Agreement, including any act of repudiation or wrongful rejection of the Equipment, if such failure has not been corrected within ten (10) days after Magnolia has given Customer written notice of such failure; or
  - 5.1.3. Any act or event whereby Customer (a) is or becomes insolvent, (b) is or becomes a party to any bankruptcy or

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receivership proceeding or any similar action affecting the financial condition or property of Customer, if such proceeding has not been dismissed within 30 days, or (c) makes a general assignment for the benefit of creditors.

- 5.2. **Effect of Default.** Upon the occurrence of an Event of Default Magnolia may (a) terminate this Agreement and invoke all rights Magnolia possesses upon termination and (b) if Customer remains liable for any monetary obligation created under this Agreement, accelerate and declare all obligations of Customer created under this Agreement to be immediately due and payable by Customer as a liquidated sum and proceed against Customer in any lawful way for satisfaction of such sum, or repossess so much of the Equipment as remains in Customer's possession.
- 5.3. **Waiver.** No delay or failure of either party in exercising any right hereunder, nor any partial exercise thereof, shall be deemed to constitute a waiver of any rights granted hereunder or at law. The presence or absence of an Event of Default shall in no way prejudice or abridge the right of Magnolia to seek and obtain in appropriate circumstances stoppage of goods in transit or reclamation of goods after delivery.

## Section 6 Risk of Loss

Customer shall bear the entire risk of loss or damage to any Equipment after it is delivered to the Location. The occurrence of any such loss or damage shall not permit Customer to delay or reduce the payment of any fees or charges prescribed under this Agreement. Customer shall, at its own expense, obtain and maintain property and casualty insurance for the Equipment against all risk of loss or damage.

## Section 7 Miscellaneous

- 7.1. **Public Announcements.** Customer shall not make any public announcement or press release regarding the Agreement or any of the provisions contained herein without the prior express written consent of Magnolia. Customer shall not list Magnolia as (or otherwise communicate to third parties that Best Buy may be willing to act as) a reference for Magnolia's products/services without Magnolia's prior express written consent.
- 7.2. **Trademarks.** Under no circumstances may Customer use any of Magnolia's trademarks, trade names, service marks or any other identifying marks of Magnolia without first obtaining Magnolia's prior express written consent.
- 7.3. **Governing Law.** The Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Minnesota without regard to its or any other jurisdiction's conflicts of laws principles.
- 7.4. **Entire Agreement.** This writing is intended by the parties as the final and binding expression of their contract and agreement and is a complete and exclusive statement of the terms thereof and supersedes all prior negotiations, representations and agreements.
- 7.5. **Terms and Conditions Govern.** These Terms and Conditions are intended to govern the relationship of the parties hereto and cancel and supersede any terms and conditions which may appear in the Agreement, any invoice, purchase order, receipt or other form issued during the course of performance of the Services.
- 7.6. **Assignment/Delegation.** Magnolia may assign any some or all of its rights under the Agreement. Notwithstanding the foregoing, Magnolia may hire or appoint or contract with third parties or other subcontractors of its choice to (i) assist Magnolia in managing its obligations under the Agreement; (ii) act as its agent in managing the Agreement on its behalf; and/or (iii) provide Services.



- 7.7. **Amendments.** The Agreement may not be modified except by a writing referencing the Agreement and signed by both of the parties hereto.
- 7.8. **Severability.** If any provision herein shall be deemed or declared unenforceable, invalid or void by a court of competent jurisdiction, the same shall not impair any of the other provisions contained herein which shall be enforced in accordance with their respective terms.
- 7.9. **Payment.** Payment is due in accordance with the payment terms in the Agreement. Magnolia reserves the right to charge interest at the greater of (i) 1.5% per month or (ii) the maximum amount of interest as permitted by applicable law on any unpaid balance. Customer's failure to make all payments in accordance with the payment terms in the Agreement or otherwise adhere to the payment terms set forth in the Agreement may lead to delays in the Services, without penalty or liability to Magnolia.
- 7.10. **Marketing.** Customer grants, and, in the event that Customer is not the owner of the Location, Customer shall cause the owner of the Location to grant, Magnolia a perpetual, non-exclusive, royalty-free license to use images taken by Magnolia of the Location, including the Equipment and the completed Services, for marketing purposes.

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**MAGNOLIA** 

Designed by Peter Pellegrino | Business: (301) 770-8061 | Cell: (410) 561-2260 | Email: [PPellegrino@magnoliaav.com](mailto:PPellegrino@magnoliaav.com)

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## Sales and Installation Agreement (Continued)

**Payment terms:** Unless otherwise agreed to by the parties in writing, for each phase of performance of the project, all costs (including applicable taxes) related to such phase including, but not limited to, costs for Equipment, other parts, and Services shall be paid in full by Customer prior to commencement of Services by Magnolia for such phase. Special and Custom Orders are subject to special payment terms as set forth in the TERMS AND CONDITIONS. Magnolia may cancel delivery of Equipment and/or cease performing Services in the event a required payment is not timely made as required.

**All payments made by customer to magnolia are non-refundable** except where allowed in accordance with Magnolia's return policy in connection with the return of certain Equipment.

*Magnolia and Customer have signed this Agreement effective the last date indicated below when accepted by Magnolia.*

I have read and agree to the [terms/proposal] and agree to using this electronic record to provide written consent for the work to proceed. To request a free copy of this disclosure by mail or e-mail, call 1-877-643-9682.

Magnolia Representative

Customer

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

Date 6/28/2017

Signature \_\_\_\_\_

Date 6/28/2017



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## Terms and Conditions

"Magnolia" as used herein refers to Magnolia Hi-Fi, LLC. "Customer" as used herein refers to the customer referenced on the Agreement to which these terms and conditions are attached (the "Agreement"). Terms not defined in these Terms and Conditions shall have the meaning as set forth in the Agreement.

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### Section 1 - Price, Charges, and Taxes

**1.1 Pre-Payment.** Unless otherwise set forth in the Agreement, all costs and estimated costs for Equipment and Services (as each is defined in the Agreement) must be pre-paid prior to commencement of performance of Services or delivery of any Equipment for each phase of the Services as described in the Agreement. Where Customer pays with a credit card, Customer agrees not to file a claim with the credit card company to obtain a refund of any funds paid to Magnolia ("chargeback"), and Customer further agrees to pay to Magnolia any funds subject to a chargeback processed in contravention of this provision unless Customer can prove with clear and convincing evidence that it did not receive the Equipment or Services for which it paid.

**1.2 Special Orders.** All orders for Equipment not generally carried by Magnolia and/or which require that an order be placed directly with the manufacturer or distributor of such Equipment ("Special Order") shall be subject to a non-refundable deposit of fifteen percent (15%) of the price of the Equipment. The non-refundable deposit will not be returned to Customer under any circumstance, including a return of the Equipment, other than the Equipment (as ordered) becomes unavailable.

**1.3 Custom Orders.** All orders for Equipment where Customer has requested specific attributes (e.g., finish, color, size) or where manufacturer builds only to order ("Custom Order") shall require complete and full payment of the price of such Equipment at the time the Custom Order is placed. The purchase price for Custom Order Equipment is non-refundable. The non-refundable purchase price shall not be returned to Customer under any circumstance other than a complete failure to deliver Equipment. Any Customer complaint concerning the condition of Custom Order Equipment or whether it meets specifications shall be handled as a warranty claim under the manufacturer's warranty.

**1.4 Permits.** Customer is responsible for the cost of and obtaining any required building permits. Where a permit is specifically required for work being performed by Magnolia, Magnolia shall cooperate with Customer to procure such permit. Customer shall hold Magnolia harmless for any costs and expenses that arise from Customer's failure to cooperate in the procurement an applicable permit.

**1.5 Costs.** If Magnolia employs any legal process to recover any amount due and payable from Customer hereunder, Customer shall pay all costs of collection and reasonable attorney fees.

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## Terms and Conditions (Continued)

**1.6 Freight and Insurance.** Customer shall reimburse Magnolia for all charges for transportation, rigging, and drayage and for insurance, if any, of the Equipment in transit. If Magnolia uses a third-party mover or carrier to ship the Equipment to the Location, Magnolia shall, unless it notifies Customer to the contrary, arrange for shipment or carriage of the Equipment, collectively or by component, to Customer F.O.B. point of manufacture or shipment.

**1.7 Taxes.** Customer shall be responsible for applicable taxes on Equipment and Services.

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### Section 2 - Delivery, Inspection, and Services

**2.1 Site Preparation.** Customer, at its expense and prior to delivery and installation of the Equipment at the Location, shall prepare the Location in an appropriate manner and shall cause the Location to conform to any utility, climate control, and communication interface specifications that Magnolia or the manufacturers of the Equipment may supply. Magnolia shall not be required to perform the Services unless the Location is free of dust, debris and/or other impediments as Magnolia may reasonably determine, and Magnolia has reasonable cooperation and access to the Location, the designated work area, utilities and functional utility shutoff controls. Magnolia reserves the right to refuse or reschedule work due to unsafe site conditions which includes, without limitation, extreme temperatures, unsanitary conditions, circumstances that pose potential code violations, natural disasters, or the existence of other hazards.

**2.2 Delivery and Inspection of Equipment.** Customer is responsible for accepting delivery of Equipment at the Location. In the event Customer authorizes a third party to accept delivery or Magnolia to deliver in the absence of Customer, Customer hereby waives any right to claim non-delivery of goods, in whole or in part, where Magnolia can reasonably establish a delivery of the Equipment based on its records. Customer shall promptly inspect the Equipment upon its arrival at the Location and shall notify Magnolia if Customer finds any nonconformity or defect in the Equipment.

**2.3 Service Dependencies.** Customer acknowledges and agrees that where Services to be provided and/or completed by Magnolia are dependent on others performing work (e.g., providing power, building enclosures or cabinetry) Magnolia will not be liable for any delays in completing its Services due to incomplete work of others. Upon discovery of any unknown or undisclosed information concerning the condition of the project site or the status of dependencies, the project scope and/or schedule is subject to alteration.

**2.4 Service Exclusions.** Magnolia does not install, repair or modify electrical wiring for power, heating or lighting purposes. Magnolia does not provide, fabricate, or install custom built cabinets. Magnolia may, however, provide dimensions and specifications for cabinetry as agreed upon by Customer and Magnolia. Magnolia does not provide fabrication or installation of customer speaker grills and/or coverings. Magnolia does not provide painting of speaker grills, wall plates or other accessories. Certain non-standard wall plates will require additional charges. Magnolia does not provide outdoor in-ground wiring services and will not modify grass or landscape services

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## Terms and Conditions (Continued)

or provide labor or tools for trenching buried cable. Magnolia will install and configure control systems and controllers sold by Magnolia and will integrate audio/video functions, but Magnolia does not integrate lighting or other powered devices with such control systems (once integrated, such powered devices can be configured to operate with the control system by Magnolia).

**2.5 Adult Must Be Present.** If persons under the age of 18 are present at the Location without adult supervision, Magnolia personnel will not perform Services.

**2.6 Right to Modify Location.** Customer represents and warrants ownership of the Location or that Customer has obtained the valid consent of the owner to make necessary changes to the Location that may arise out of the performance of the Services. In addition, Customer has reviewed any restrictive covenants or association restrictions to confirm that any changes arising from the Services do not violate any such covenants or restrictions. Customer agrees to hold Magnolia and its employees, contractors and agents harmless from any claim that Customer or Magnolia failed to obtain valid consent of the owner of the Location or violated any covenant or restriction.

**2.7 Change Orders.** If changes are required in the Equipment or the Services the prices will be revised in writing signed and agreed by both parties ("Change Order"), and prices will thereafter be modified to the extent necessary by the Change Order.

**2.8 Architects or Builders.** In appropriate situations the Customer may designate in a writing delivered to Magnolia a representative such as a builder, architect or interior designer who shall have authority as indicated in the writing to sign for and commit the Customer to price and other modifications to Equipment, design, locations or diagrams, and any such designated agent shall be deemed "Customer" for purposes of the Agreement.

**2.9 Lathe and Plaster.** Notwithstanding anything in these Terms and Conditions to the contrary, Magnolia will use commercially reasonable efforts to eliminate the possibility of cracks in lathe and plaster walls while performing the Services. However, Customer acknowledges and agrees that due to the nature of construction of such materials, Magnolia shall not be responsible or liable for any resulting damage to such lathe and plaster walls.

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## Section 3 - Warranties and Limitations

### 3.1 Limited Warranty and Disclaimer.

**3.1.1 Limited Equipment Warranty.** Magnolia's sole obligation, and Customer's exclusive remedy, for any defect or nonconformity in the Equipment shall be for Magnolia to cooperate with Customer to provide it with the benefit, if any, of the warranty and support commitment of the third-party manufacturers and suppliers of the Equipment. Customer, recognizing that Magnolia is not the

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## Terms and Conditions (Continued)

manufacturer of the Equipment, expressly waives any claim against Magnolia for any failure of the Equipment. Customer may independently seek to obtain directly from the manufacturers of the Equipment maintenance or repair of the Equipment under any warranty or guarantee provided by such manufacturer. Customer acknowledges, unless Customer obtains separate service agreements with such manufacturers and suppliers or other third party covering maintenance or repair of the Equipment at the Location, that such manufacturers and suppliers may require Customer to deliver defective Equipment to their authorized service centers for maintenance or repair.

**3.1.2 Limited Services Warranty.** As Customer's exclusive remedy for any nonconformity or defect in the Services for which Magnolia is responsible, Magnolia shall, during the ninety (90) day period following the completion of delivery and installation of the Equipment at the Location, provide reasonable efforts to correct or cure such nonconformity or defect.

**3.1.3 Conditions Precedent.** Magnolia shall bear no responsibility for correcting, curing, or otherwise remedying any nonconformity or defect in the Services if (1) the Equipment is not properly installed by a party other than Magnolia; (2) the Equipment is not maintained and operated under normal conditions by qualified personnel (where required); (3) the Equipment incorporates spare or replacement parts other than those purchased under this Agreement; (4) the Equipment has been altered, abused, misused, or taken apart; (5) the nonconformity or defect (or other breach with respect to the condition or operation of the Equipment) has not been reported to Magnolia within ninety (90) days following the completion of delivery and installation of the Equipment at the Location; or (6) the nonconformity or defect has arisen as a result of damage to the Equipment occurring subsequent to delivery thereof to the Location, unless, in any such case, such event or condition directly results from the fault or negligence of Magnolia.

**3.1.4 Disclaimer.** With the sole exception of the preceding undertakings, MAGNOLIA DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT (INCLUDING ANY PROGRAMS), INCLUDING ITS CONDITION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. MAGNOLIA FURTHER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY MAGNOLIA HEREUNDER.

**3.2 Limitation of Liability; Indemnification.** Customer agrees that except for direct property damage or personal injury resulting from Magnolia's negligence while performing Services in no event shall Magnolia be liable to Customer or any other person for any damages including, without limitation, any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Customer by any other party, even if Magnolia has been advised of the possibility of such claims or demands, arising out of or related to the Services, or installation, de-installation, use of or inability to use the Equipment. Further, Customer affirmatively releases, and agrees to indemnify, defend and hold harmless Magnolia (including its employees, officers, directors and agents) from and against (i) any loss, liability, or damage that Customer may suffer as a result of acts or omissions by Magnolia at the request or approval of Customer, including but not limited to, any changes or alterations to the Location (e.g., changes to walls, baseboards, or

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## Terms and Conditions (Continued)

floors), (ii) any claim against, or loss, liability, or damage suffered by Magnolia arising out of a breach of Customer's obligations (including representations and warranties) set forth in the Agreement, and (iii) any claim against, or loss, liability or damage suffered by Magnolia arising out of Customer's negligence or willful misconduct. Some states do not allow limitations or release of certain damages or liability, so the above limitation of liability and release may not apply to Customer.

**3.3 Allocation of Risk.** The foregoing sections on limited warranty, warranty exclusions and limited liability reflect a bargained-for allocation of risk between Customer and Magnolia. Customer acknowledges and agrees that Magnolia's prices and/or rates set forth in the Agreement would be different if the foregoing allocation of risk were different.

**3.4 Force Majeure.** Magnolia shall not be responsible for delays or failures in its performance resulting from acts or omissions beyond its control.

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## Section 4 - Limited License

Subject to the terms and conditions in this Agreement, Magnolia grants Customer a non-transferable, non-assignable, non-exclusive, royalty-free limited license, without the right to sub-license, to use the (i) paper or electronic copies of documentation produced and delivered to the Customer under the Agreement, including but not limited to the Proposal, drawings, specifications and/or any other instruments of service provided by Magnolia (the "Documentation"), and (ii) any source code developed by Magnolia for Customer in connection with the Services (the "Source Code"). Notwithstanding the foregoing, in no event shall Customer (i) sell, transfer, distribute, reverse engineer or create any derivative works using the Documentation or the Source Code or (ii) use the Documentation or the Source Code for any illegal purpose.

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## Section 5 - Default

**5.1 Events of Default.** Any of the following shall constitute an "Event of Default" under the Agreement:

**5.1.1** Customer's failure to pay to Magnolia any charge, cost, or other payment accruing hereunder, if such delinquency has not been corrected within ten (10) days after Magnolia has given Customer written notice of such delinquency.

**5.1.2** Customer's failure to perform any other obligation set forth in this Agreement, including any act of repudiation or wrongful rejection of the Equipment, if such failure has not been corrected within ten (10) days after Magnolia has given Customer written notice of such failure; or

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## Terms and Conditions (Continued)

**7.3 Governing Law.** The Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Minnesota without regard to its or any other jurisdiction's conflicts of laws principles.

**7.4 Entire Agreement.** This writing is intended by the parties as the final and binding expression of their contract and agreement and is a complete and exclusive statement of the terms thereof and supersedes all prior negotiations, representations and agreements.

**7.5 Terms and Conditions Govern.** These Terms and Conditions are intended to govern the relationship of the parties hereto and cancel and supersede any terms and conditions which may appear in the Agreement, any invoice, purchase order, receipt or other form issued during the course of performance of the Services.

**7.6 Assignment/Delegation.** Magnolia may assign any some or all of its rights under the Agreement. Notwithstanding the foregoing, Magnolia may hire or appoint or contract with third parties or other subcontractors of its choice to (i) assist Magnolia in managing its obligations under the Agreement; (ii) act as its agent in managing the Agreement on its behalf; and/or (iii) provide Services.

**7.7 Amendments.** The Agreement may not be modified except by a writing referencing the Agreement and signed by both of the parties hereto.

**7.8 Severability.** If any provision herein shall be deemed or declared unenforceable, invalid or void by a court of competent jurisdiction, the same shall not impair any of the other provisions contained herein which shall be enforced in accordance with their respective terms.

**7.9 Payment.** Payment is due in accordance with the payment terms in the Agreement. Magnolia reserves the right to charge interest at the greater of (i) 1.5% per month or (ii) the maximum amount of interest as permitted by applicable law on any unpaid balance. Customer's failure to make all payments in accordance with the payment terms in the Agreement or otherwise adhere to the payment terms set forth in the Agreement may lead to delays in the Services, without penalty or liability to Magnolia.

**7.10 Marketing.** Customer grants, and, in the event that Customer is not the owner of the Location, Customer shall cause the owner of the Location to grant, Magnolia a perpetual, non-exclusive, royalty-free license to use images taken by Magnolia of the Location, including the Equipment and the completed Services, for marketing purposes.

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## Magnolia In-Home Support Terms Of Service

**1. Magnolia In-Home Support.** These terms and conditions ("Terms and Conditions") govern and describe the post-installation assistance and technical support service (the "Service") we will provide you when you (a) purchase a qualifying home entertainment system (which may include multiple functions and zones) together with installation, or (b) purchase the Service on a standalone basis for a qualifying system, including any renewal or extension (the "Magnolia In-Home Support"). One year of Magnolia In-Home Support is included as part of the purchase and installation of your qualifying system with auto renewal of successive one-year periods for an additional annual charge until you cancel (see Section 9 below for more details). Your qualifying system combined with Magnolia In-Home Support, whether included or purchased separately, becomes a "Covered System". References to "you" and "your" are references to the person who is authorized to receive Service per Section 8, below. References to "Magnolia", "we", "our" and "us" are referring to Magnolia or Best Buy and their employees or third party service providers, as the case may be.

**2. When Magnolia In-Home Support Begins and Ends.** Your Magnolia In-Home Support begins on the date (a) your Covered System installation is complete as determined by Magnolia, or (b) you purchase Magnolia In-Home Support on a standalone basis (including any renewal or term extension), and continues in effect until the one year anniversary following the date of such installation or purchase (the "Service Period"), unless otherwise extended, cancelled or suspended, as provided in Section 9, below.

**3. What is Covered?** Magnolia In-Home Support gives you the following proactive and reactive support for your Covered System during the Service Period, subject to the limitation described in Section 6 and your performance of the responsibilities as described in Section 7, below:

- a. In home visits scheduled by Magnolia with your consent at 30 days (post installation on-site follow-up), 6 months (updates, functionality tests, system optimization) and 11 months (consultation) following installation
- b. Support provided by a certified Magnolia Service Technician including expedited response time to your location, troubleshooting, and removal and re-installation of Covered System products needing repair (but not the cost of repair). Any repair charges would be invoiced separately and may be covered under other Magnolia product protection plans (purchased separately).

**4. What's Not Covered?**

- a. Troubleshooting issues that are likely to be caused by malware infections or resolved by upgrading your operating system or consumer software in any Covered System component to the current version, if you choose not to upgrade.
- b. Training services beyond how to use your Covered System and power cycling education, which we may provide as part of the initial installation.
- c. Additional or extended warranties on products included in your Covered System or repairs to any components in your Covered System (or the cost thereof). You may purchase other product protection plans from Magnolia separately.
- d. Damage to or loss of any software, data, or other information residing or recorded on a device in your Covered System.
- e. Issues that stem from the internet service provider (ISP) including faulty hardware, internet availability and speed to the home.

**5. How to Obtain Service.** You may obtain service by calling your system designer (the person who worked with you on the purchase and installation of your Covered System) at the number provided by the system designer, or Magnolia Customer Care at 1-877-643-9682.

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## Magnolia In-Home Support Terms Of Service (Continued)

### **6. Geographic Limitations.**

Magnolia In-Home Support is available only where your location is within 25 miles of a Magnolia Design Center store. We may decide to provide Magnolia In-Home Support in certain circumstances even where your location is more than 25 miles away from a Magnolia store, but additional charges would apply including higher base rates and trip charges. See your system designer for additional details.

### **7. Your Responsibilities.**

To receive Magnolia In-Home Support, you agree to comply with each of the terms listed below:

- a. You will need to provide your Magnolia System ID or order/invoice number as found on your receipt, quick start guide, or transactional email.
- b. You will provide information about the symptoms and causes of the issues with the Covered System.
- c. You will respond to requests for information such as serial number and/or model number of devices included in the Covered System, any peripherals devices connected or installed on the Covered System, any error messages displayed, the actions which were taken before the Covered System experienced the issue and the steps taken to resolve the issue.

**8. Eligibility for Service; No Transfer of Your Magnolia In-Home Support.** We will provide Services to the original purchaser of the Covered System (including his or her immediate family) at the location where the Covered System was installed. Magnolia In-Home Support may not be transferred to any other person or system.

### **9. Cancellation; Renewal.**

- a. Cancellation by You. Subject to the terms below, to cancel your Magnolia In-Home Support you must call Magnolia Customer Care at 1-877-643-9682 and request that your Magnolia In-Home Support be cancelled. It may take up to 20 business days for your cancellation request to be processed. You may not cancel your Magnolia In-Home Support during the initial Service Period when the initial Service Period was included as part of your purchase of a qualifying system.
- b. Cancellation by You within 30 Days. You may cancel your Magnolia In-Home Support renewal (or initial purchase if not included in a qualifying system purchase) and obtain a refund in the amount you paid for the Magnolia In-Home Support if the cancellation occurs within 30 days of the date of your purchase. At our discretion, we may deduct from any refund the value of services already provided.
- c. Cancellation by You after 30 Days. You may cancel your Magnolia In-Home Support renewal (or initial purchase if not included in a qualifying system purchase) and obtain a pro rata refund of the amount you paid based on the number of months remaining in the Service Period if you cancel more than 30 days after the date of purchase. At our discretion we may deduct from any pro rata refund the value of services already provided.
- d. Cancellation or Suspension of Service by Us. We may cancel your Magnolia In-Home Support for convenience and discontinue providing Service at any time upon written notice to you and issue you a pro rata refund for any prepaid amounts. At our discretion we may deduct from any pro rata refund the value of services already provided. We may also cancel this Magnolia In-Home Support immediately or suspend Service without notice, at our discretion, if you fail to satisfy your responsibilities identified in Section 7 or if there is a limitation of services identified in Section 11. Upon our cancellation or suspension of the Magnolia In-Home Support, your right to receive Services ceases or is suspended, as the case may be.
- e. Service Renewals. Magnolia In-Home Support is included as part of the purchase and installation of your Covered System for a

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## Magnolia In-Home Support Terms Of Service (Continued)

Service Period of one year. You may also purchase Magnolia In-Home Support separately for a system previously installed by Magnolia. Upon completion of the initial Service Period, whether included with a purchase or purchased separately, the Magnolia In-Home Service will auto renew for successive one-year Service Periods until you tell us to cancel. You will be charged the renewal rate provided to you during the purchase and installation of your Covered System or the renewal rate then in effect as provided in a notice to you prior to renewal. Until the Magnolia In-Home Support is cancelled, you authorize us to charge your credit or debit card at the beginning of each renewal Service Period for the amount provided to you on your service order for the Covered System or such other amount agreed to by you after notice from us. At our discretion, we may offer you a renewal of your Magnolia In-Home Support as a new service contract. Any new service contract that we offer you may contain different pricing, coverage and benefits as compared to your original Magnolia In-Home Support.

**10. Privacy Policy.** It is our policy to protect the privacy of our customers. For information on our privacy practices, please call Magnolia Customer Care at 1-877-643-9682, or review our privacy policy at [www.magnoliaav.com/legal-notices/privacy-policy](http://www.magnoliaav.com/legal-notices/privacy-policy).

**11. Limitations of Service.** We shall not be liable for any failure or delay in performance due to any cause beyond our control. We reserve the right to refrain from providing the Service, wholly or in part, on the basis that the minimum system requirements are not met or your technical needs or other requirements are unusual or extensive and beyond the scope of these Terms and Conditions, as determined by us.

**12. Modifications to Terms of Services.** We may change these Terms and Conditions from time to time. Upon any such change, we will notify you by posting the changes to Magnolia's web site at [www.magnoliaav.com/legal-notices](http://www.magnoliaav.com/legal-notices). Your use of the Service constitutes affirmative agreement to abide by and be bound by these Terms and Conditions including their modifications.

### 13. DISCLAIMER OF WARRANTIES.

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER/SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO EACH CUSTOMER.

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## Magnolia In-Home Support Terms Of Service (Continued)

### 14. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- (I) WE WILL UNDER NO CIRCUMSTANCES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO COSTS OF RECOVERING, REPROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA OR THE FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA, ANY LOSS OF BUSINESS, PROFITS, REVENUE OR ANTICIPATED SAVINGS, RESULTING FROM OUR OBLIGATIONS UNDER THIS PLAN; AND
- (II) OUR TOTAL LIABILITY UNDER THIS PLAN SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE OF YOUR PLAN INCLUDING TAXES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO EACH CUSTOMER.

### 15. LAWS

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Minnesota, excluding its conflict of law provisions. If any provision(s) of these Terms and Conditions is/are held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

### 16. DISPUTES

Any dispute or claim arising out of or relating in any way to your Magnolia In-Home Support, or to any products or services sold or distributed by Magnolia, will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to these Terms and Conditions.

BY AGREEING TO ARBITRATION, YOU UNDERSTAND AND AGREE THAT YOU ARE WAIVING YOUR RIGHT TO MAINTAIN OTHER AVAILABLE RESOLUTION PROCESSES, SUCH AS A COURT ACTION OR ADMINISTRATIVE PROCEEDING, TO SETTLE ANY DISPUTES OR CLAIMS. THE RULES IN ARBITRATION ARE DIFFERENT. THERE IS NO JUDGE OR JURY. ALTHOUGH REVIEW IS LIMITED, AN ARBITRATOR CAN AWARD ON AN INDIVIDUAL BASIS THE SAME DAMAGES AND RELIEF AS WOULD BE AVAILABLE IN COURT, AND MUST ENFORCE THE SAME LIMITATIONS STATED IN THESE TERMS AND CONDITIONS AS A COURT WOULD.

To begin an arbitration proceeding, you must send a demand to the American Arbitration Association (AAA) describing your claim and serve a copy of the demand on our registered agent CT Corporation System, Inc., 100 South Fifth Street, Suite 1075, Minneapolis, MN 55402. The arbitration will be conducted by the AAA under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. The AAA's rules and the form for filing an arbitration claim are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees (but not any attorney's fees) for claims totaling less than \$10,000 unless the arbitrator determines your claims are frivolous. Likewise, Best Buy will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed upon location.

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## Magnolia In-Home Support Terms Of Service (Continued)

We each agree that any dispute resolution proceedings of any nature or in any forum will be conducted only on an individual basis and not in a class, consolidated or representative action. This means that you may not purport to act on behalf of a class or any other person. Likewise, an arbitrator may consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

If for any reason a claim proceeds in court rather than in arbitration, we each waive any right to a jury trial, unless such waiver is unenforceable. This means that any claim would be decided by a judge, not a jury. We also both agree that you or we may bring suit in court to seek to enjoin infringement or other misuse of intellectual property rights.

### 17. ENTIRE AGREEMENT

These Terms and Conditions and your service order and purchase receipt constitute the entire agreement between you and us with respect to the services and benefits provided to you under your Magnolia In-Home Support and will prevail over any conflicting, additional, or other terms of any marketing collateral or other document or expression. Employees and agents of Magnolia and Best Buy have NO AUTHORITY (apparent, express, implied, or otherwise) to alter or modify these terms and conditions for Magnolia In-Home Support – either orally or in writing.

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## Magnolia Remote Management Terms Of Service<sup>1</sup>

(<sup>1</sup>Terms of service apply when applicable, as noted on your order/invoice number)

**1. Magnolia Remote Management.** These terms and conditions ("Terms and Conditions") govern and describe the post-installation remote management service (the "Service") we will provide you when you purchase the Service as part of your purchase and installation of a qualifying system, including any renewal or extension ("Magnolia Remote Management"). Your qualifying system combined with the purchase of Magnolia Remote Management becomes a "Covered System". References to "you" and "your" are references to the person who is authorized to receive Service per Section 8, below. References to "Magnolia", "we", "our" and "us" are referring to Magnolia or Best Buy and their employees or third party service providers, as the case may be.

**2. When Magnolia Remote Management Begins and Ends.** Your Magnolia Remote Management begins on the date your Covered System installation is complete as determined by Magnolia and continues in effect until the one year anniversary following the date of such installation or purchase (the "Service Period"), subject to auto renewal unless otherwise cancelled or suspended, as provided in Section 9 below.

**3. What is Covered?** Magnolia Remote Management gives you the following proactive and reactive support for your Covered System during the Service Period, subject to the limitation described in Section 6 and your performance of the responsibilities as described in Section 7, below:

- a. Remote support in real time including system performance reporting and access to and control of most products we install on your network (capabilities may vary).
- b. Remote diagnosis and technical support which may eliminate the need for a service appointment.
- c. Scheduled status checks including internet speed tests and connectivity status updates.
- d. Proactive system updates such as firmware updates (capabilities may vary).

**4. What's Not Covered?**

- a. Troubleshooting issues that are likely to be caused by malware infections or resolved by upgrading your operating system or consumer software in any Covered System component to the current version, if you choose not to upgrade.
- b. Training services beyond how to use your Covered System and power cycling education, which we may provide as part of the initial installation.
- c. Additional or extended warranties on products included in your Covered System or repairs to any components in your Covered System (or the cost thereof). You may purchase other product protection plans from Magnolia separately.
- d. Damage to or loss of any software, data, or other information residing or recorded on a device in your Covered System.
- e. Issues that stem from the internet service provider (ISP) including faulty hardware, internet availability and speed to the home.

**5. How to Obtain Service.** You may obtain service by calling your system designer (the person who worked with you on the purchase and installation of your Covered System) at the number provided by the system designer, or Magnolia Customer Care at 1-877-643-9682.

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## Magnolia Remote Management Terms Of Service (Continued)

### **6. Geographic Limitations.**

Magnolia Remote Management is available only where your location is within 25 miles of a Magnolia store. We may decide to provide Magnolia Remote Management in certain circumstances even where your location is more than 25 miles away from a Magnolia store, but additional charges would apply including higher base rates and trip charges. See your system designer for additional details.

### **7. Your Responsibilities.**

To receive Magnolia Remote Management, you agree to comply with each of the terms listed below:

- a. You will need to provide your Magnolia System ID or order/invoice number as found on your receipt, quick start guide, or transactional email.
- b. You will provide information about the symptoms and causes of the issues with the Covered System.
- c. You will respond to requests for information such as serial number and/or model number of devices included in the Covered System, any peripherals devices connected or installed on the Covered System, any error messages displayed, the actions which were taken before the Covered System experienced the issue and the steps taken to resolve the issue.

### **8. Eligibility for Service; No Transfer of Your Magnolia Remote Management.**

We will provide Services to the original purchaser of the Covered System (including his or her immediate family) at the location where the Covered System was installed. Magnolia Remote Management may not be transferred to any other person or system.

### **9. Cancellation; Renewal.**

- a. Cancellation by You. Subject to the terms below, to cancel your Magnolia Remote Management you must call Magnolia Customer Care at 1-877-643-9682 and request that your Magnolia Remote Management be cancelled. It may take up to 20 business days for your cancellation request to be processed. You may not cancel your Magnolia Remote Management during the initial Service Period.
- b. Cancellation by You within 30 Days. You may cancel your Magnolia Remote Management auto renewal and obtain a refund in the amount you paid for the Magnolia Remote Management if the cancellation occurs within 30 days of the date of your purchase. At our discretion, we may deduct from any refund the value of services already provided.
- c. Cancellation by You after 30 Days. You may cancel your Magnolia Remote Management auto renewal and obtain a pro rata refund of the amount you paid based on the number of months remaining in the Service Period if you cancel more than 30 days after the date of purchase. At our discretion we may deduct from any pro rata refund the value of services already provided.
- d. Cancellation or Suspension of Service by Us. We may cancel your Magnolia Remote Management for convenience and discontinue providing Service at any time upon written notice to you and issue you a pro rata refund for any prepaid amounts. At our discretion we may deduct from any pro rata refund the value of services already provided. We may also cancel this Magnolia Remote Management immediately or suspend Service without notice, at our discretion, if you fail to satisfy your responsibilities identified in Section 7 or if there is a limitation of services identified in Section 11. Upon our cancellation or suspension of the Magnolia Remote Management, your right to receive Services ceases or is suspended, as the case may be.
- e. Service Renewals. Magnolia Remote Management is offered for an initial Service Period of one year. Upon completion of the Initial Service Period, Magnolia Remote Management will auto renew for successive one-year Service Periods until you tell us to cancel. You will be charged the renewal rate provided to you during the purchase and installation of your Covered System or the renewal rate then in effect as provided in a notice to you prior to renewal. Until the Magnolia Remote Management is cancelled, you authorize

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## Magnolia Remote Management Terms Of Service (Continued)

us to charge your credit or debit card at the beginning of each renewal Service Period for the amount provided to you on your service order for the Covered System or such other amount agreed to by you after notice from us. At our discretion, we may offer you a renewal of your Magnolia Remote Management as a new service contract. Any new service contract that we offer you may contain different pricing, coverage and benefits as compared to your original Magnolia Remote Management.

**10. Privacy Policy.** It is our policy to protect the privacy of our customers. For information on our privacy practices, please call Magnolia Customer Care at 1-877-643-9682, or review our privacy policy at [www.magnoliaav.com/legal-notices/privacy-policy](http://www.magnoliaav.com/legal-notices/privacy-policy).

**11. Limitations of Service.** We shall not be liable for any failure or delay in performance due to any cause beyond our control. We reserve the right to refrain from providing the Service, wholly or in part, on the basis that the minimum system requirements are not met or your technical needs or other requirements are unusual or extensive and beyond the scope of these Terms and Conditions, as determined by us.

**12. Modifications to Terms of Services.** We may change these Terms and Conditions from time to time. Upon any such change, we will notify you by posting the changes to Magnolia's web site at [www.magnoliaav.com/legal-notices](http://www.magnoliaav.com/legal-notices). Your use of the Service constitutes affirmative agreement to abide by and be bound by these Terms and Conditions including their modifications.

### 13. DISCLAIMER OF WARRANTIES.

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER/SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY, NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO EACH CUSTOMER.

### 14. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW:

(i) WE WILL UNDER NO CIRCUMSTANCES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO COSTS OF RECOVERING, REPROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA, OR THE FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA, ANY LOSS OF BUSINESS, PROFITS, REVENUE OR

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## Magnolia Remote Management Terms Of Service (Continued)

ANTICIPATED SAVINGS, RESULTING FROM OUR OBLIGATIONS UNDER THIS PLAN; AND  
(II) OUR TOTAL LIABILITY UNDER THIS PLAN SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE OF YOUR PLAN INCLUDING TAXES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO EACH CUSTOMER.

### 15. LAWS

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Minnesota, excluding its conflict of law provisions. If any provision(s) of these Terms and Conditions is/are held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

### 16. DISPUTES

Any dispute or claim arising out of or relating in any way to your Magnolia Remote Management, or to any products or services sold or distributed by Magnolia, will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to these Terms and Conditions.

BY AGREEING TO ARBITRATION, YOU UNDERSTAND AND AGREE THAT YOU ARE WAIVING YOUR RIGHT TO MAINTAIN OTHER AVAILABLE RESOLUTION PROCESSES, SUCH AS A COURT ACTION OR ADMINISTRATIVE PROCEEDING, TO SETTLE ANY DISPUTES OR CLAIMS. THE RULES IN ARBITRATION ARE DIFFERENT. THERE IS NO JUDGE OR JURY. ALTHOUGH REVIEW IS LIMITED, AN ARBITRATOR CAN AWARD ON AN INDIVIDUAL BASIS THE SAME DAMAGES AND RELIEF AS WOULD BE AVAILABLE IN COURT, AND MUST ENFORCE THE SAME LIMITATIONS STATED IN THESE TERMS AND CONDITIONS AS A COURT WOULD.

To begin an arbitration proceeding, you must send a demand to the American Arbitration Association (AAA) describing your claim and serve a copy of the demand on our registered agent CT Corporation System, Inc., 100 South Fifth Street, Suite 1075, Minneapolis, MN 55402. The arbitration will be conducted by the AAA under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. The AAA's rules and the form for filing an arbitration claim are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees (but not any attorney's fees) for claims totaling less than \$10,000 unless the arbitrator determines your claims are frivolous. Likewise, Best Buy will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed upon location.

We each agree that any dispute resolution proceedings of any nature or in any forum will be conducted only on an individual basis and not in a class, consolidated or representative action. This means that you may not purport to act on behalf of a class or any other person. Likewise, an arbitrator may consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

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## Magnolia Remote Management Terms Of Service (Continued)

If for any reason a claim proceeds in court rather than in arbitration, we each waive any right to a jury trial, unless such waiver is unenforceable. This means that any claim would be decided by a judge, not a jury. We also both agree that you or we may bring suit in court to seek to enjoin infringement or other misuse of intellectual property rights.

### 17. ENTIRE AGREEMENT

These Terms and Conditions and your service order and purchase receipt constitute the entire agreement between you and us with respect to the services and benefits provided to you under your Magnolia Remote Management and will prevail over any conflicting, additional, or other terms of any marketing collateral or other document or expression. Employees and agents of Magnolia and Best Buy have NO AUTHORITY (apparent, express, implied, or otherwise) to alter or modify these terms and conditions for Magnolia Remote Management – either orally or in writing.